

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 22, 2007

KELVIN WADE CLOYD v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Johnson County
No. 4403 Lynn W. Brown, Judge

No. E2006-01784-CCA-R3-HC - Filed April 21, 2008

The petitioner, Kelvin Wade Cloyd, appeals the trial court's denial of his petition for habeas corpus relief. After review, we conclude that the petitioner is not entitled to any relief and affirm the judgment from the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and ALAN E. GLENN, JJ., joined.

Patrick Denton, Elizabethton, Tennessee, for the appellant, Kelvin Wade Cloyd.

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Joe C. Crumley, Jr., District Attorney General; and John H. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

This case involves a challenge to the Amended Judgment and the Original Judgment, wherein the petitioner was sentenced as a Range I, standard offender to ten years, with a release eligibility of thirty percent, after being found guilty, following a bench trial, of possession of .5 grams or more of cocaine for resale, a Class B felony. During a subsequent sentencing hearing on May 6, 1994, the petitioner was granted an alternative sentence and placed in a community corrections program. A little more than a year later, he was discharged from the community corrections program and placed on State probation for the remainder of his sentence. While on probation, the petitioner was arrested and charged with vehicular homicide and possession of a Schedule VI controlled substance. The petitioner was convicted of vehicular homicide and sentenced to eighteen years, to be served consecutively to his earlier sentence. The trial court then issued an "Amended Judgment," resentencing the petitioner on the original possession of Schedule II for resale judgment and adding two years to his ten-year sentence.

In May 2004, the petitioner filed a petition for habeas corpus relief which was summarily dismissed. An appeal was taken from that dismissal, and this court remanded the case back to the trial court for a hearing. See Kelvin Wayne Cloyd v. State, No. E2004-02283-CCA-R3-HC, 2005 Tenn. Crim. App. LEXIS 562 (Tenn. Crim. App. June 6, 2005). After the hearing, the trial court found the “Amended Judgment” void and the Original Judgment not void. In effect, the trial court removed the additional two years added to the petitioner’s original ten-year sentence and denied any further relief.

In this appeal, the State concedes that the trial court was without jurisdiction to increase the petitioner’s ten-year sentence following the revocation of probation. The Amended Judgment is set aside, and the original ten-year sentence is reinstated. The petitioner contends that his original ten-year sentence was illegal and void because the ten-year sentence made the petitioner ineligible for probation under Tennessee Code Annotated section 40-35-303. The petitioner is requesting that this court declare his original conviction void and apply all sentencing credits to his current sentence for vehicular homicide.

Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. Tennessee Code Annotated sections 29-21-101 et seq. codifies the applicable procedures for seeking a writ. While there is no statutory time limit in which to file for habeas corpus relief, Tennessee law provides very narrow grounds upon which such relief may be granted. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A habeas corpus petition may be used only to contest void judgments which are facially invalid because (1) the convicting court was without jurisdiction or authority to sentence the petitioner; or (2) the petitioner’s sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993).

We conclude that the original judgment is not void. The sentence length of ten years was within the appropriate sentencing range for a Class B felony, and community corrections was an available sentencing option under Tennessee Code Annotated section 40-36-106.

The petitioner also requests that, should we find the original sentence void, we grant sentencing credits toward his current sentence. In any event, there is no authority to grant such relief.

Conclusion

The petitioner did not request relief that could be granted. On this record, the original judgment is valid on its face. We conclude that the petitioner is not entitled to any relief, and we affirm the judgment from the trial court.

JOHN EVERETT WILLIAMS, JUDGE